

**ROYAL GOVERNMENT OF BHUTAN
MINISTRY OF LABOUR AND HUMAN RESOURCES**



**REGULATION ON BHUTANESE
OVERSEAS EMPLOYMENT AGENT
2013**

Foreword

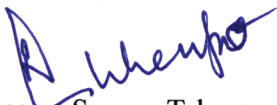
The Ministry of Labour and Human Resources is pleased to bring forth the Regulation on Employment of Bhutanese Overseas Workers in accordance with the Rule Making Power conferred under Section 211 of the Labour and Employment Act of the kingdom of Bhutan, 2007. The Regulation clearly prescribes procedures and standard for the Bhutanese Overseas Employment Agents which will ensure the agents to implement the program effectively and efficiently.

Over the years, the Ministry of Labour and Human Resources has been consistently working hard to promote and facilitate gainful employment to all Bhutanese job seekers through various strategies such as skill Development and training Programs, Internship program, Counseling Program and job placement and referral. However, due to ever increasing enrollment in the schools and the limited absorption capacity of the Bhutanese job market coupled with mismatch of skills and the high expectation of the job seekers, it has become a difficult task for the Ministry to provide a decent employment to the Bhutanese job seekers.

In view of this, the Royal Government of Bhutan has committed to explore the employment opportunities overseas. This will not only ease the unemployment pressure in the country but will also help the country's economy through remittances, transfer of knowledge and skills, and more so on changing the mindset of the Bhutanese workers.

Lastly, I would like to commend the hard work of the members of the drafting committee and my colleagues in the Department of Employment and Department of Labour in developing this Regulation. I hope that this Regulation is user friendly and provides the necessary tools for efficient implementation of the overseas employment program.

Tashi Delek!



(Ngeema Sangay Tshempo)

MINISTER

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INTRODUCTION

The Ministry of Labour and Human Resources in accordance with the Rule Making powers conferred under Section 211 of the Labour and Employment Act, 2007 hereby promulgates this regulation concerning recruitment for employment of Bhutanese overseas.

CHAPTER 1 GENERAL PROVISIONS

1.1 Preliminary

- 1.1.1 This Regulation shall be called "Regulation on Bhutanese Overseas Employment Agent, 2013".
- 1.1.2 This regulation shall come into force with effect from.....
- 1.1.3 All policies, issuances, rules and regulations inconsistent with these Rules are hereby repealed or modified accordingly.
- 1.1.4 This regulation shall be revised from time to time as and when necessary by the Administration.

1.2 Purpose

The purpose and objectives of Employment of Bhutanese Overseas are:

- 1.2.1 To facilitate employment of Bhutanese overseas workers and promote full employment;
- 1.2.2 To promote and uphold the dignity and fundamental human rights of Bhutanese overseas workers(BOW);
- 1.2.3 To protect every BOW by securing the best possible terms and conditions of employment;
- 1.2.4 To ensure the employment of BOW only in those countries where their rights are protected;
- 1.2.5 To disseminate and allow free flow of information which will prepare the Bhutanese individuals to make informed decision about overseas employment;
- 1.2.6 To provide an effective gender sensitive mechanism that can adequately protect and safeguard the interest and rights of BOW;
- 1.2.7 To ensure proper and careful selection of Bhutanese workers for overseas employment in order to protect and uphold the reputation of Bhutan abroad;
- 1.2.8 To institute a system to guarantee that BOW possess the required skills and knowledge or experience for overseas jobs by imparting training in skill development;
- 1.2.9 To support reintegration programs of returning BOW into Bhutanese labour market;

- 1.2.10 The Administration and Ministry of Foreign Affairs will take the lead role in collaboration with the Bhutanese Overseas Employment Agents (BOEA) in terms of evacuation and provide financial support and diplomatic coordination; and
- 1.2.11 The Administration based on the labour market situation in Bhutan shall determine the number of BOWs and the skill categories to be sent abroad to work.

1.3 Notwithstanding the above, the following policy directives are applicable to the Bhutanese Overseas Employment Agents (BOEA):

- 1.3.1 The number of BOEAs to be licensed shall be reviewed and determined by the Ministry of Labour & Human Resources from time to time;
- 1.3.2 The BOEA shall only facilitate the recruitment of BOW against those occupations, gender, age and countries approved by the Ministry of Labour & Human Resources from time to time;
- 1.3.3 The comprehensive insurance for BOW shall be maintained with the destination country by the BOEA, which shall cover both for transit and in the work place, subject to monitor by the Administration; and
- 1.3.4 The Administration shall charge fees as deemed appropriate for the BOEA license, which shall be renewed annually.

CHAPTER 2

LICENCING AND REGULATION

2.1 Registration Requirements

To operate BOEA, the licensee shall:

- 2.1.1 Be a Bhutanese citizen;
- 2.1.2 Have separate and independent office;
- 2.1.3 Have a reasonable number of office staff and equipment (as required by Administration from time to time)
- 2.1.4 Produce a document to prove that he/she has business affiliation with principal employer abroad;
- 2.1.5 Produce a copy of a notarized contract agreement executed between the BOEA and principal employer agent duly endorsed by the Royal Bhutanese Embassy / consulate of the destination country. Where there are no RGoB's representative, relevant government offices of the host country should be endorsed on the agreement;
- 2.1.6 Produce security clearance certificate.

2.2 A verified undertaking stating that the applicant shall:

- 2.2.1 Select only medically fit Bhutanese with skills as specified by CLA;
- 2.2.2 Assume full and complete responsibility for all claims and liabilities which may arise in connection with the use of the license;
- 2.2.3 Assume joint and solitary liability with the principal employer for all claims and liabilities which may arise in connection with the implementation of the contract, including but not limited to payment of wages, death and disability compensation and repatriations cost;
- 2.2.4 Comply with the labour and social legislations of Bhutan and of the country of employment of the recruited workers in force;
- 2.2.5 Assume full and complete responsibility for all acts of its officials, employees and representatives done in connection with recruitment and placement;
- 2.2.6 Negotiate for the best terms and conditions of employment for BOWs;
- 2.2.7 Disclose the full terms and conditions of employment to the applicant workers;
- 2.2.8 Provide orientation on recruitment procedures, terms and conditions and other relevant information to the applicants;
- 2.2.9 Arrange travel of workers to the country of destination and back to Bhutan;
- 2.2.10 Repatriate the deployed workers and his/her personal belongings when the need arises.
- 2.2.11 Be responsible for the return of BOWs placed by him even after the revocation, suspension, non-renewal and cancellation of his/her license.

2.2.12 Declare that the BOEA does not disqualify under section 2.10 of this Regulation.

2.2.13 Maintain a list of persons involved in the recruitment and placement, together with their appointment, bio-data and two (2) copies of their passport-size photographs as well as their security clearances. Only applications with complete supporting documents shall be processed.

2.3 Upon being registered with the Administration and obtaining the recommendation letter, the MOEA may issue business license as per rules and regulations in force.

2.4 However, persons with derogatory record shall not be eligible to engage in the business of recruitment and placement of Bhutanese workers overseas but not limited to the following:

2.4.1 Those certified to have derogatory record or information with the Royal Bhutan Police or by the Administration.

2.4.2 Those against whom probable cause or prima facie finding of guilt for illegal recruitment or other related cases exists;

2.4.3 Those convicted for illegal recruitment or other related cases and/or crimes involving moral turpitude;

2.4.4 Those blacklisted by the prospective destination countries; and

2.4.5 Those agencies whose licenses have been previously revoked or cancelled by the Administration for violation of Labour & Employment Act, 2007.

2.5 Charges for Registration

Upon approval of the application, the applicant shall pay registration charge of Nu. 100,000 (one hundred thousand) to Ministry of Labour & Human Resources.

2.6 Validity of Registration

The registration shall be valid for one year from the date of issuance unless sooner cancelled, revoked or suspended for violation of applicable Bhutanese laws, regulations and other pertinent issuances. The license shall be valid only at the place/s stated therein and when used by the licensed person.

2.7 Renewal of Registration

2.7.1 BOEAs shall submit an application for the renewal of its registration 60 days before its expiry;

2.7.2 Pay renewal charges of Nu. 100, 000 (one hundred thousand) which is subject to revision from time to time by the Administration;

2.7.3 Security Clearances for responsible officers; and

2.7.4 The Administration may impose other requirements as required.

2.8 Action on Renewal of License

Within 7 working days from receipt of the application for renewal with the complete requirements, the Administration shall undertake evaluation and inspection and determine the grant or denial of the application. Licenses of agencies which fail to meet the requirements set by the Administration shall not be renewed.

Only applications for renewal submitted with complete requirements shall be processed.

2.9 Late Filing of Renewal

Any agency which failed to file an application for renewal of registration may be allowed to renew within thirty (30) days from expiry thereof, but shall pay a fine of Nu. 10,000 (ten thousand). Failure to renew the registration beyond the extended 30 days period will result in de registration of the concerned BOEA.

2.10 Non-Transferability of License

2.10.1 The license is non-transferable.

2.10.2 In case of death of the proprietor and to prevent disruption of operation to the prejudice of the interest of legitimate heirs, the license may be extended upon request of the heirs, to continue only for the purpose of winding up business operations.

2.11 Derogatory Record after Issuance/Renewal of Registration

The registration shall be suspended until cleared by the Administration should any derogatory record be found to exist against the license holder. The appointment of any officer or employee of any licensed agency may be cancelled or revoked at any time with due notice to the BOEA concerned, whenever the said BOEA or its employee is found to have any derogatory record, as herein contemplated.

2.12 Transfer of Business Address and Establishment of additional offices

Any transfer of business address or establishment of additional offices shall be affected only with prior authority or approval of the Administration. The approval shall be issued only upon formal notice of the intention to transfer or establishment of additional offices with the following attachments:

2.12.1 Copy of the contract of lease or proof of building ownership.

2.12.2 The new office shall be subject to the regular ocular inspection procedures by duly authorized representatives of the Administration.

2.12.3 Notice to the public of the new address or the additional office shall be published in a newspaper of general circulation.

2.13 Conduct of Recruitment Outside of Registered Office

No licensed agency shall conduct any recruitment and job fair of any form outside of that is/are stated in the license or approved additional office(s) without prior approval from the Administration.

2.14 Conduct of Recruitment without Registration and License

No person shall recruit and deploy a Bhutanese citizen to work overseas without a valid license issued under this Regulation.

Any person guilty of an offence under section 2.14 shall be charged for human trafficking under Penal Code of Bhutan, 2004.

CHAPTER 3

FEES, COSTS AND CONTRIBUTIONS

3.1 Fees and Costs Chargeable to Principals

Unless otherwise provided by the foreign employer, the principal or the BOEA shall be responsible for the payment of the following:

- 3.1.1 visa fee;
- 3.1.2 airfare which shall be refundable by the BOWs within six months after securing employment; and
- 3.1.3 processing of work permit (if applicable)

3.2 Fees/Costs Chargeable to the Workers

- 3.2.1 Except where the prevailing system in the country of destination, either by law, policy or practice, do not allow the charging or collection of placement and recruitment fee, BOEA may, upon successful placement, charge and collect from its hired workers a placement fee in an amount equivalent to one month salary, exclusive of documentation costs.
- 3.2.2 Documentation costs to be paid by the worker shall include, but not limited to, expenses for the following:
 - a. Passport;
 - b. Security clearance certificates;
 - c. Birth Certificate;
 - d. Medical fitness certificate;
 - e. Skill Test, if necessary; and
 - f. Inoculation, if required by destination country.

3.3 In the event the BOEA agrees to perform documentation services, the worker shall pay only the actual cost of the document based on the official receipts.

3.4 The above-mentioned placement and documentation costs are the only authorized payments that may be collected from a hired worker. No other charges in whatever form, manner or purpose, shall be imposed on and be paid by the worker without prior approval of the Administration. Such fees shall be collected from a hired worker only after he/she has been successfully placed with the principal employer.

CHAPTER 4

ADVERTISEMENT FOR OVERSEAS JOBS

4.1 Advertisement for Actual Job Vacancies.

The BOEAs shall advertise actual job vacancies for accredited foreign principal/project with job orders only after prior approval of the Administration. The recruitment and selection process shall be done as per the Recruitment and Selection Regulation (RSR), 2012. The advertisements shall indicate the following information:

- 4.1.1 Name, address and license number of the BOEA;
- 4.1.2 Remuneration and other benefits as per the destination countries;
- 4.1.3 Worksite of prospective principal/project;
- 4.1.4 Skill categories and qualification standards required; and
- 4.1.5 Number of available positions.

4.2 Advertisement for Manpower Pooling/Recruitment

BOEAs may advertise for manpower pooling without approval of the Administration subject to the following conditions:

- 4.2.1 The advertisement should indicate in bold letters that it is for manpower pooling only and that no fees will be collected from the applicants; and
- 4.2.2 The advertisement indicates the name, address and license number of BOEA, name and worksite of the prospective registered/accredited principal, remuneration and other benefits as per the destination countries and the skill categories and qualification standards required.

4.3 Foreign Advertisers for Overseas Job Vacancies

Foreign principals/employers who wish to advertise overseas job vacancies may do so only through BOEAs or the Administration.

CHAPTER 5

SKILLS TEST AND MEDICAL EXAMINATION FOR OVERSEAS EMPLOYMENT

5.1 When to Refer for Skills Test

If required, an applicant for overseas employment shall be referred for skills test to a DOS accredited skills-testing center only after the agency and/or its foreign principal or employer has interviewed and pre-qualified him/her to an existing overseas position.

5.2 Scope of Skills Test

The BOEA shall ensure that the test shall only be for the skill category that the worker has applied for.

5.3 When to Refer for Medical Examination

The BOEA shall refer an applicant for overseas employment medical test to a Ministry of Health-accredited medical clinic only after the BOEA or its foreign principal has interviewed and pre-qualified him for an existing overseas position.

5.4 Scope of Medical Examination

The agency shall ensure that the medical examination is conducted in accordance with the requirements of the employer.

5.5 Evacuation of BOW in times of Emergencies

The Administration and other government agencies shall support and provide assistance to arriving workers particularly those who are in distress and requires assistance.

CHAPTER 6

INSPECTION OF AGENCIES

6.1 Scope of Inspection

Depending on the purpose of inspection, the CLA or his duly authorized representative may inspect the premises and require the presentation of necessary documents, records and books of accounts of the BOEA and examine the same.

6.2 Authority to Inspect

An authority to inspect shall be issued by the Administration before any inspection is conducted.

Such authority, stating the purpose and subject of inspection, shall be presented to the BOEA before inspection.

6.3 Inspection for Purposes of Establishment/Relocation of Office

Before registration, the Administration shall conduct an inspection of the premises and facilities including the pertinent documents of the applicant. Inspection shall likewise be conducted on the new premises in case of relocation of office.

6.4 Routine Inspection.

Offices, studios or pre-departure orientation seminar (PDOS) venues of BOEAs shall be subject to periodic inspection by the Administration to determine compliance with the rules and regulations in force.

6.5 Special Inspection

The Administration may conduct inspection upon receipt of a complaint or report of violation of rules and regulations in force.

6.6 Monitoring Compliance

The Administration shall monitor the compliance of the BOEAs to the registration requirements.

Appropriate sanctions shall be imposed for non-compliance with any of their undertakings.

6.7 Violations Found in the Course of Inspection

Violations found in the course of inspection such as non-compliance with the laws, rules and regulations in force, shall be the grounds for imposition of appropriate sanction or revocation, suspension or cancellation of license. A copy of the inspection report shall be submitted to the CLA who shall issue appropriate instruction to the Administration.

CHAPTER 7

LEGAL ASSISTANCE AND ENFORCEMENT MEASURES

7.1 Acts Constituting Illegal Recruitment

Illegal Recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers and includes referrals, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-licensee or non-holder of authority.

- 7.1.1 It shall likewise include the following acts committed by any person whether or not a holder of a license or authority:
 - 7.1.1.1 To charge or accept directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Administration or to make a worker pay the recruiter or its agents any amount greater than that actually loaned or advanced to him;
 - 7.1.1.2 To furnish or publish any false notice or information or document in relation to recruitment or employment;
 - 7.1.1.3 To give any false notice, testimony, information or document or commit any act of misrepresentation for the purpose of securing a license;
 - 7.1.1.4 To induce or attempt to induce a worker already employed to quit his employment in order to offer him another unless the transfer is designed to liberate a worker from evidenced oppressive terms and conditions of employment;
 - 7.1.1.5 To influence or attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency;
 - 7.1.1.6 To engage in the recruitment or placement of workers in jobs harmful to public health or morality or to the dignity of Bhutan as may be prohibited by law or duly constituted authority;
 - 7.1.1.7 To obstruct or attempt to obstruct inspection by the CLA or by his/her duly authorized representative;
 - 7.1.1.8 Fail to submit reports on the status of employment, placement vacancies, and remittance of foreign exchange earnings, separation from jobs, departures and such other matters or information as may be required by the CLA.
 - 7.1.1.9 To substitute or alter to the prejudice of the worker, employment contract approved and verified by the Administration from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the Administration;
 - 7.1.1.10 To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations other than those authorized under the Labour Act and its rules and regulations in force;

- 7.1.1.11 Failing to actually deploy without valid reason as determined by the Administration; and
- 7.1.1.12 Failing to reimburse expenses incurred by the worker in connection with his/her documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault.

7.2 Anti-Illegal Recruitment Program

The Administration shall adopt policies and procedures, prepare and implement programs toward the eradication of illegal recruitment activities such as, but not limited to the following:

- 7.2.1 Providing legal assistance to victims of illegal recruitment and related cases;
- 7.2.2 Assistance in the prosecution of suspected illegal recruiters;
- 7.2.3 Special operations such as surveillance of persons and entities suspected to be engaged in illegal recruitment; and
- 7.2.4 Information and education campaign.

Whenever necessary, the Administration shall coordinate with other appropriate entities in the implementation of said program.

7.3 Legal Assistance

The Administration shall provide free legal assistance to victim of illegal recruitment and selection related cases including but not limited to, legal advice, assistance in the preparation of complaints and supporting documents, institution of criminal actions and whenever necessary, provide counselling during preliminary investigation and hearings.

7.4 Receiving Complaints for Illegal Recruitment

Victims of illegal recruitment and selection related cases may file with the Administration a complaint in writing for assistance purposes.

Complaints and reports involving illegal recruitment and selection may be filed with the appropriate regional office of the Administration.

7.5 Action on the Complaint/Report

Where the complaint/report alleges that illegal recruitment and selection activities are on-going, surveillance shall be conducted and if such activities are confirmed in the preliminary examination, issuance of closure order may be recommended to the BOEA by the CLA.

If sufficient basis for criminal action is found, the case shall be immediately forwarded to the appropriate authority for action as deemed necessary.

7.6 Surveillance

The Administrator and/or designated official in the MoLHR regional offices may, on his own initiative, conduct surveillance on the alleged illegal recruitment activities. Within a reasonable time from the termination of surveillance, a report supported by an affidavit, shall be submitted to the authority concerned, as the case may be.

7.7 Institution of Criminal Action

The CLA, the Administrator or the Regional Director concerned, or their duly authorized representatives or any aggrieved person, may initiate appropriate criminal action with an appropriate authority.

CHAPTER 8

VERIFICATION OF DOCUMENTS AND REGISTRATION OF FOREIGN PRINCIPALS, EMPLOYERS AND PROJECTS

8.1 Verification of Documents

Recruitment documents of foreign principals, employers and projects shall be verified prior to registration with the Administration. The Administration shall review and verify the recruitment documents, including the master employment contract with the view to establish the existence of the employing person, company or project, its capability to hire workers at the applicable rates and at desirable working conditions that are in conformity with the minimum standards prescribed by the LEA, 2007 and/or with the labour laws and legislations of the host country.

8.2 Documentary Requirements for Verification

The following documents shall be submitted to the Administration for verification:

- 8.2.1 Special Power of Attorney issued by the principal or employer to the licensed Bhutanese agency, or recruitment agreement or service agreement;
- 8.2.2 Master employment contract which incorporates, among others the minimum provisions of employment contracts of workers, as follows:
 - 8.2.2.1 Guaranteed wages for regular work hours and overtime pay, which shall not be lower than the prescribed minimum wage in the host country or not lower than the appropriate minimum wage standards set forth in a bilateral agreement or international convention, if applicable, or not lower than the minimum wage in the country, whichever is highest;
 - 8.2.2.2 Free transportation to and from the worksite, or equivalent benefit;
 - 8.2.2.3 Free food and accommodation, or equivalent benefit;
 - 8.2.2.4 Just/authorized causes for termination of the contract or of the services of the workers taking into consideration the customs, traditions, moral practices, company policies and the labour laws and social legislations of the host country;
 - 8.2.2.5 Manpower request indicating the position and salary of the workers to be hired; and
 - 8.2.2.6 Valid business license, registration certificate or equivalent document.

8.3 Application for Registration of Foreign Principals and Projects

Only duly licensed entities may file for the registration of foreign principals and projects.

8.4 Documentary Requirements for Registration of Principals/Projects

The following verified documents shall be submitted to the Administration, through the BOEAs for registration of the principal, employer or project:

- 8.4.1 Special power of attorney or recruitment agreement, or service agreement, as the case may be;
- 8.4.2 Master employment contract of the foreign principal; and
- 8.4.3 Manpower request of the foreign principal indicating the position and salary of the workers to be hired;

Subsequent manpower requests from the registered principal/project shall be submitted to the Administration.

8.5 Registration of Foreign Placement Agencies

Foreign placement agencies or similar entities may be registered as principals if they are authorized to operate as such in their respective countries and subject to such guidelines as may be prescribed by the Administration.

8.6 Validity of Registration of Foreign Principals and Projects

Upon compliance with the documentary requirements, the foreign principal or project shall be registered by the Administration valid for a period of one year, unless sooner revoked or cancelled by the Administration on any of the following grounds:

- 8.6.1 Upon expiry of the principal's business license;
- 8.6.2 Upon written mutual agreement by the parties to pre-terminate the Agreement;
- 8.6.3 False documentation or misrepresentation in connection with the application for registration; and
- 8.6.4 Final judgment in a disciplinary action against the foreign principal.

8.7 Renewal of Registration

The registration shall be renewed upon request by the agency provided that the documents required for initial registration are still valid.

8.8 Registration

A foreign principal that acts as direct employer may be registered to more than one BOEAs, provided that a uniform compensation package is adopted by the principal and the agency.

A principal that is licensed to operate as foreign placement agency by its government may be registered to a maximum of two (2) BOEAs, provided that a uniform compensation package is adopted by the principal and the agency.

CHAPTER 9

DOCUMENTATION OF WORKERS BY BOEA

9.1 Period for Deployment

A BOEA shall deploy its recruited/hired workers within sixty days (60) from the date of issuance of the overseas employment certificate.

9.2 Cancellation of Worker's Documents

If the deployment of the worker does not materialize after the expiry of 60 days, the BOEA shall report the non-deployment and, the reasons thereof and apply to the Administration for the cancellation of the worker's processed documents.

If the deployment of the worker does not materialize due to the worker's fault, the BOEA may charge the worker for actual expenses incurred in connection with his recruitment and selection, duly supported by official receipts. However, if failure in deployment is due to the fault of the BOEA, any charges obtained by the BOEA from the worker shall be reimbursed/refunded to the concerned worker.

CHAPTER 10

EMPLOYMENT STANDARDS

10.1 Employment Standards

The Administration shall determine, formulate and review employment standards in accordance with the market development thrusts and welfare objectives of the overseas employment program and the prevailing market conditions.

10.2 Minimum Provisions of Employment Contract

Consistent with its welfare and employment facilitation objectives, the following shall be considered the minimum requirements for contracts of employment of workers:

- 10.2.1 Guaranteed wages for regular work hours and overtime pay, as appropriate, which shall not be lower than the prescribed minimum wage in the host country, not lower than the appropriate minimum wage standard set forth in a bilateral agreement or international convention duly ratified by the host country and Bhutan or not lower than the minimum wage in the Bhutan, whichever is highest;
- 10.2.2 Free transportation to and from the worksite, or equivalent benefit;
- 10.2.3 Free and decent accommodation, or equivalent benefit;
- 10.2.4 Just/authorized causes for termination of the contract or of the services of the workers taking into consideration the customs, traditions, norms, moral practices, company policies and the labour laws and social legislations of the host country;
- 10.2.5 The Administration may also consider the following as basis for other provisions of the contract:
 - 10.2.5.1 Existing labour and social laws of the host country;
 - 10.2.5.2 Relevant agreements, conventions, delegations or resolutions;
 - 10.2.5.3 Relevant bilateral and multilateral agreements or arrangements with the host country; and
 - 10.2.5.4 Prevailing condition/realities in the market.

10.3 Freedom to Stipulate

Parties to overseas employment contracts are allowed to stipulate other terms and conditions and other benefits not provided under these minimum requirements; provided the whole employment package are more beneficial to the worker than the minimum; provided that the same shall not be contrary to law, public policy and morals, and provided further, that BOEAs shall make foreign employers aware of the standards of employment adopted by the Administration.

10.4 Disclosure of Terms and Conditions of Employment

The BOEA and the BOWs shall fully disclose all relevant information in relation to the recruitment and selection and employment of the BOWs in accordance with the guidelines set by the Administration.

CHAPTER 11

RECRUITMENT VIOLATION AND RELATED CASES

11.1 Jurisdiction

The Administration shall exercise original and exclusive jurisdiction to hear and decide all cases which are administrative in character, involving or arising out of violations of recruitment and selection rules and regulations including refund of fees collected from BOWs and violation of the conditions for issuance of license to recruit and select BOWs.

11.2 Grounds for imposition of administrative sanctions:

- 11.2.1 Charging, imposing or accepting directly or indirectly, any amount of money, goods or services, or any fee or bond for any purpose whatsoever before successful placement of an applicant BOWs;
- 11.2.2 Charging or accepting directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the CLA, or making a BOW pay any amount greater than that actually received by him as a loan or advance;
- 11.2.3 Charging or collecting placement fee for deployment to countries where the prevailing system, either by law, policy or practice, do not allow the charging or collection of recruitment, selection and placement fees;
- 11.2.4 Collecting any fee from a BOW without issuing the appropriate receipt clearly showing the amount paid and the purpose for which payment was made;
- 11.2.5 Engaging in act/s of misrepresentation in connection with recruitment, selection and placement of BOWs, such as furnishing or publishing any false notice, information or document in relation to recruitment, selection and employment;
- 11.2.6 Inducing or attempting to induce an already employed BOW to transfer from or leave his employment for another unless the transfer is designed to liberate a BOW from evidenced oppressive terms and conditions of employment;
- 11.2.7 Influencing or attempting to influence any person or entity not to employ any BOW who has not applied for employment through his agency;
- 11.2.8 Obstructing or attempting to obstruct inspection by the CLA, the Administrator or their duly authorized representative(s);
- 11.2.9 Substituting or altering to the prejudice of the BOW, employment contracts approved and verified by the Administration from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the Administration;
- 11.2.10 Failure to submit reports related to overseas recruitment, selection and employment within the specified time, as may be required by the CLA or the Administration;
- 11.2.11 Withholding or denying travel or other pertinent documents from BOWs for considerations other than those authorized under existing laws and regulations;

- 11.2.12 Engaging in recruitment and selection activities in places other than that specified in the license without prior authorization from the Administration;
- 11.2.13 Appointing or designating agent(s), representative(s) or employee without prior approval from the Administration;
- 11.2.14 Falsifying or altering travel documents of applicant BOW in relation to overseas recruitment and selection activities;
- 11.2.15 Deploying BOW whose employment and travel documents were not processed by the Administration or those agencies authorized by it;
- 11.2.16 Deploying BOWs to principals not accredited by the Administration;
- 11.2.17 Failure to deploy a BOW within the prescribed period without valid reason;
- 11.2.18 Disregard of orders, notices and other legal processes issued by the Administration;
- 11.2.19 Coercing BOWs to accept prejudicial arrangements in exchange for certain benefits that rightfully belong to the BOWs;
- 11.2.20 Withholding of BOWs' salaries or remittances in whole or part without justifiable reasons;
- 11.2.21 Deploying under age BOWs;
- 11.2.22 Engaging in act/s of misrepresentation for the purpose of securing a license or renewal thereof, such as giving false information or documents;
- 11.2.23 Engaging in the recruitment, selection and placement of BOWs in jobs harmful to public health or morality or to dignity of BOWs;
- 11.2.24 Transfer or change of ownership of a single proprietorship licensed to engage in overseas employment;
- 11.2.25 Failure to reimburse expenses incurred by the BOW in connection with his documentation and processing for purposes of deployment, where deployment does not take place without the BOW's fault;
- 11.2.26 Failure to comply with the undertaking to provide Pre-Departure Orientation Seminar to BOWs;
- 11.2.27 Non-compliance with any other undertaking in connection with the issuance or renewal of the license;
- 11.2.28 Allowing persons who are otherwise disqualified to participate in the overseas employment program under existing laws, rules and regulations to participate in the management and operation of the BOEA; and
- 11.2.29 Violation of other pertinent provisions of the LEA, 2007 and other relevant laws, rules and regulations, guidelines and other issuances on recruitment, selection and placement of BOWs for overseas employment and the protection of their welfare.

11.3 Complaint Registration

Any complaint arising out of violation of this regulation may be filed with the Administration.

CHAPTER 12

FILING OF COMPLAINTS

12.1 Who May File

Any aggrieved person may file a complaint in writing for violation of the LEA, 2007 and the BOEA Rules and Regulations.

For this purpose, an aggrieved person is one who is prejudiced by the commission of a violation.

Unless the offence is of criminal nature, the administration on its own initiative may conduct proceedings based on the reports of violation of this regulation subject to preliminary evaluation.

12.2 Contents of Complaint

Along with supporting documents, all complaints must contain the following:

- 12.2.1 The name and address of the complainant;
- 12.2.2 The name and address of the respondent;
- 12.2.3 The nature of the complaint;
- 12.2.4 The substance, cause/grounds of the complaint;
- 12.2.5 Action, time and place;
- 12.2.6 The amount of claim, if any;
- 12.2.7 The relief/s sought.

12.3 Action Upon complaint

Upon receipt of the complaint, the Administration shall issue an order, together with the complaint letter and supporting documents, if any, directing the respondent/s to file a verified answer and not a Motion to Dismiss within ten (10) calendar days from receipt, attaching proof that a copy was sent to the complainant.

12.4 Failure to File Answer

In case of failure to file Answer, the investigation /hearing shall proceed. An answer filed out of time shall not be admitted except on meritorious grounds and upon motion.

12.5 Motion for Extension

Only one motion for extension of time to file answer shall be allowed. The Chief Legal Officer (CLO), upon receipt of such motion may, upon meritorious grounds, grant anon-extendible period of ten (10) calendar days. Except where allegations in the complaint refers to facts or circumstances which occurred abroad making it necessary to verify with the concerned foreign principal, a longer period may be granted. A ruling on the motion may be made by the CLO or during the proceedings and entered in the minutes or sent by personal service or by registered mail.

12.6 Proof and Completeness of Service

The contents of the return shall be proof of the facts stated therein. Service by registered mail is complete upon receipt by the addressee or agent; but if the addressee or agent fails to claim his mail from the postmaster, service shall take effect after the date of the last notice. Where the present location of the addressee is unknown, service made at the last known address shall be sufficient.

12.6.1 Nature of Proceedings

The proceedings shall comply with the requirements of due process without strictly adhering to the technical rules of procedure and evidence applicable to judicial proceedings. The CLO may avail himself of all reasonable means to ascertain the facts of the case.

12.7 Preliminary Hearing

The CLO shall set the date, time and place of the preliminary hearing with due notice to the parties, with the end view of arriving at an amicable settlement and for purposes of simplifying the issues, marking of evidence and stipulation of facts.

12.8 Clarification Questions

At any stage of the proceedings and before the case is submitted for resolution, the CLO may initiate clarification questions to the parties or their witnesses to further elicit relevant facts or information. The CLO may set a hearing where the parties shall be given an opportunity to be present but without right to examine or cross-examine. If the parties so desire, they may submit questions to the CLO who may ask the parties or witnesses concerned.

12.9 Service of Order to Appear/To Produce Documents

The Administration may issue an order to appear/to produce documents specified in the order. The process server who personally served the order to appear/produce documents, notice order, resolution or decision shall submit his return within five (5) calendar days from the date of his service thereof, stating legibly in the return his name, the mode(s) of service, the name(s) of the other person(s) to whom it was served and the date(s) of receipt. If no service was effected, the serving officer shall state the reason. The return shall form part of the records of the case.

12.10 Failure or Refusal to Obey Order to Appear/to Produce Documents

The license of any BOEA whose officer(s) or employer fail or refuse to comply with an order to appear or to produce documents without justifiable reason shall be suspended until otherwise ordered. This is without prejudice to the outcome of the investigation where the proper penalty may be imposed.

12.11 Summary Judgment

Should the CLO find, upon consideration of the complaint, answers and evidence submitted, that resolution/decision may be rendered, the case shall be deemed submitted and a summary judgment shall be issued.

12.12 Effects of Withdrawal of Complaint/ Desistance

The withdrawal of complaint/ desistance shall not bar the Administration from proceeding with the investigation of violation(s) of recruitment and selection procedure. The Administration shall resolve the case on the merits and impose the appropriate penalties.

12.14 Resolution of the Case

The CLO shall, within ninety (90) calendar days from the filing of the case, submit the findings and recommendations in the form of a draft order.

12.15 Who May Issue Orders

The CLA may issue orders of reprimand, suspension of documentary processing, suspension, cancellation or revocation of license, or dismissal on the merits of the case. All other orders or resolutions shall be signed by the Administrator.

12.16 Contents of Orders/Resolutions

Orders/ Resolutions issued by the Administration shall be clear and concise and shall include a brief statement of the following:

12.16.1 Facts of the case;

12.16.2 Issue(s) involved;

12.16.3 Applicable law(s) or rule(s);

12.16.4 Conclusions and reasons there for; and

12.16.5 Specific remedy (ies) or relief(s) granted or sanction(s).

12.17 Suspension of Documentary Processing

The Administration may order the suspension of the processing of documents of a respondent agency for violation of any provision of these Rules, Orders and Regulations. Such is without prejudice to the outcome of the investigation wherein the proper penalty may be imposed.

12.18 Preventive Suspension

Pending investigation of the recruitment and selection violation(s), the license of the respondent agency may be suspended for a period not exceeding the impossible penalties under the schedule of penalties, on the following grounds:

12.18.1 There exist reasonable grounds to believe that the continued operation of the BOEA will lead to further violation or exploitation of the BOWs being recruited or adversely affect friendly relations with any country or otherwise prejudice national interest; and

12.18.2 There is a prima facie evidence of a case for violation of the pertinent provisions of the LEA, 2007 and its implementing rules and regulations or any issuance of the Administration where the evidence of guilt is strong.

The CLA may issue an order lifting or modifying the order of preventive suspension as the circumstances may warrant.

Where an Order of Preventive Suspension is issued by the Administration, the CLO, within sixty (60) calendar days from filing of the case, submit his findings and recommendations in the form of a draft order.

12.19 Effects of Orders of Suspension, Revocation or Cancellation of License

An order of suspension, cancellation or revocation of license shall have the effect of suspending or terminating all activities of the BOEA which fall under the definition of recruitment, selection and placement.

12.20 Penalty

The Administration may also impose penalties for failure to comply with a final order.

CHAPTER 13

CLASSIFICATION OF OFFENSES AND SCHEDULE OF PENALTIES

13.1 Classification of Offenses

Administrative offenses are classified into serious, less serious and light, depending on their gravity. The Administration shall impose the appropriate administrative penalties for every recruitment and selection violation.

13.1.1. The following are serious offenses with their corresponding penalties:

13.1.2. Deploying under age BOWs.

1st Offense – Cancellation of License

13.1.3. Engaging in act(s) of misrepresentation for the purpose of securing a license or renewal thereof, such as giving false information or documents
1st Offense – Cancellation of License

13.1.4. Engaging in the recruitment and selection or placement of BOWs in jobs harmful to public health or morality or to dignity of BOWs.

1st Offense – Cancellation of License

13.1.5. Transfer or change of ownership of a single proprietorship licensed to engage in overseas employment

1st Offense – Cancellation of License

13.1.6. Charging or collecting placement fee for deployment to countries where the prevailing system, either by law, policy or practice do not allow the charging or collection of placement fees.

1st Offense – Cancellation of License plus refund of placement fees charged or collected from the BOWs.

The penalty shall carry the accessory penalty of refund of the fee collected from the BOW.

13.1.7. Charging or accepting directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the CLA, or making a BOW pay any amount greater than that actually received by him as a loan or advance.

1st Offense – Cancellation of License plus refund of the placement fees charged or collected from the BOW.

The penalty shall carry the accessory penalty of refund of the excessive fees charged or collected from the BOW.

13.2. The following are less serious offenses with their corresponding penalties:

13.2.1. Charging, imposing or accepting directly or indirectly, any amount of money goods or services, or any fee or bond for any purpose whatsoever before employment is obtained for an applicant.

1st Offense – Suspension of License (Two Months to Six Months)

2nd Offense – Suspension of License (Six Months to One year)

3rd Offense - Cancellation of License

The penalty shall carry the accessory penalty of refund of the fees charged or collected from the BOW, in case of non-deployment.

- 13.2.2. Collecting any fee from a BOW without issuing the appropriate receipt clearly showing the amount paid and the purpose for which payment was made.

1st Offense – Suspension of License (Two Months to Six Months)

2nd Offense – Suspension of License (Six Months to One year)

3rd Offense - Cancellation of License

- 13.2.3. Engaging in act(s) of misrepresentation in connection with recruitment and placement of workers, such as furnishing or publishing any false notice, information or document in relation to recruitment, selection and employment.

1st Offense – Suspension of License (Two Months to Six Months)

2nd Offense – Suspension of License (Six Months to One year)

3rd Offense - Cancellation of License

- 13.2.4. Obstructing or attempting to obstruct inspection by the CLA, the Administrator or their duly authorized representatives

1st Offense – Suspension of License (Two Months to Six Months)

2nd Offense – Suspension of License (Six Months to One year)

3rd Offense - Cancellation of License

- 13.2.5. Substituting or altering to the prejudice of the BOW, employment contracts approved and verified by the Administration from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the Administration

1st Offense – Suspension of License (Two Months to Six Months)

2nd Offense – Suspension of License (Six Months to One year)

3rd Offense - Cancellation of License

- 13.2.6. Withholding or denying travel or other pertinent documents from BOWs for reasons other than those authorized under existing laws and regulations.

1st Offense – Suspension of License (Two Months to Six Months)

2nd Offense – Suspension of License (Six Months to One year)

3rd Offense - Cancellation of License

- 13.2.7. Engaging in recruitment activities in places other than that specified in the license without previous authorization from the Administration

- 1st Offense – Suspension of License (Two Months to Six Months)
 - 2nd Offense – Suspension of License (Six Months to One year)
 - 3rd Offense - Cancellation of License
- 13.2.8. Appointing or designating BOEAs, representative(s) or employee without prior approval from the Administration.
- 1st Offense – Suspension of License (Two Months to Six Months)
 - 2nd Offense – Suspension of License (Six Months to One year)
 - 3rd Offense - Cancellation of License
- 13.2.9. Falsifying or altering travel documents of applicant BOW in relation to recruitment and Selection activities.
- 1st Offense – Suspension of License (Two Months to Six Months)
 - 2nd Offense – Suspension of License (Six Months to One year)
 - 3rd Offense - Cancellation of License
- 13.2.10 Deploying BOWs whose employment and travel documents were not processed by the Administration or those BOEAs authorized by it.
- 1st Offense – Suspension of License (Two Months to Six Months)
 - 2nd Offense – Suspension of License (Six Months to One year)
 - 3rd Offense - Cancellation of License
- 13.2.11. Deploying BOWs to principals not accredited by the Administration.
- 1st Offense – Suspension of License (Two Months to Six Months)
 - 2nd Offense – Suspension of License (Six Months to One year)
 - 3rd Offense - Cancellation of License
- 13.2.12. Withholding of BOWs' salaries or remittances without justifiable reasons or short changing of remittances.
- 1st Offense – Suspension of License (Two Months to Six Months)
 - 2nd Offense – Suspension of License (Six Months to One year)
 - 3rd Offense - Cancellation of License
- The penalty shall carry the accessory penalty of immediate release of the salaries or remittances being claimed.
- 13.2.13. Allowing persons who are otherwise disqualified to participate in the overseas employment program under existing laws, rules and regulations to participate in the management and operation of the BOEA.
- 1st Offense – Suspension of License (Two Months to Six Months)
 - 2nd Offense – Suspension of License (Six Months to One year)
 - 3rd Offense - Cancellation of License

- 13.2.14. Failure to reimburse expenses incurred by the BOW in connection with his documentation and processing for purposes of deployment, where deployment does not take place without the BOW's fault.
- 1st Offense – Suspension of License (Two Months to Six Months)
- 2nd Offense – Suspension of License (Six Months to One year)
- 3rd Offense - Cancellation of License
- The penalty shall carry the accessory penalty of immediate refund of expenses incurred by the BOW.
- 13.2.15. Failure to comply with the undertaking to provide Pre-Departure Orientation Seminar to BOWs.
- 1st Offense – Suspension of License (Two Months to Six Months)
- 2nd Offense – Suspension of License (Six Months to One year)
- 3rd Offense - Cancellation of License
- 13.2.16. Non-compliance with any other undertaking in connection with the issuance or renewal of the license.
- 1st Offense – Suspension of License (Two Months to Six Months)
- 2nd Offense – Suspension of License (Six Months to One year)
- 3rd Offense - Cancellation of License
- The following are light offenses with their corresponding penalties:
- 13.2.17. Inducing or attempting to induce an already employed BOWs to transfer from or leave his/her employment for another unless the transfer is designed to liberate a BOW from evidenced oppressive terms and conditions of employment.
- 1st Offense – Reprimand
- 2nd Offense – Suspension of License (One Month to Three Months)
- 3rd Offense – Suspension of License (Three Months to Six Months)
- 4th Offense - Cancellation of License
- 13.2.18. Influencing or attempting to influence any person or entity not to employ any BOW who has not applied for employment through his BOEA.
- 1st Offense – Reprimand
- 2nd Offense – Suspension of License (One Month to Three Months)
- 3rd Offense – Suspension of License (Three Months to Six Months)
- 4th Offense - Cancellation of License
- 13.2.19. Failure to deploy a BOW within the prescribed period without valid reason
- 1st Offense – Reprimand
- 2nd Offense – Suspension of License (One Month to Three Months)

- 3rd Offense – Suspension of License (Three Months to Six Months)
- 4th Offense - Cancellation of License
- 13.2.20. Coercing BOWs to accept prejudicial arrangements in exchange for certain benefits that rightfully belong to the BOWs.
 - 1st Offense – Reprimand
 - 2nd Offense – Suspension of License (One Month to Three Months)
 - 3rd Offense – Suspension of License (Three Months to Six Months)
 - 4th Offense - Cancellation of License
- 13.2.21. Disregard of orders, notices and other legal processes issued by the Administration.
 - 1st Offense – Reprimand
 - 2nd Offense – Suspension of License (One Month to Three Months)
 - 3rd Offense – Suspension of License (Three Months to Six Months)
 - 4th Offense - Cancellation of License
- 13.2.22. Failure to submit reports related to overseas recruitment, selection and employment within the specified time as may be required by the CLA or the Administration.
 - 1st Offense – Reprimand
 - 2nd Offense – Suspension of License (One Month to Three Months)
 - 3rd Offense – Suspension of License (Three Months to Six Months)
 - 4th Offense - Cancellation of License
- 13.2.23. Violation of other pertinent provisions of the LEA, 2007 and other relevant laws, rules and regulations, guidelines and other issuances on recruitment, selection and placement of BOW for overseas employment and the protection of their welfare.
 - 1st Offense – Reprimand
 - 2nd Offense – Suspension of License (One Month to Three Months)
 - 3rd Offense – Suspension of License (Three Months to Six Months)
 - 4th Offense - Cancellation of License

Money claims arising from recruitment violation may be awarded in addition to the administrative penalties imposed.

13.2 Imposition of Fines

In addition or in lieu of the penalty of suspension of license, the Administration may impose the penalty of fine which shall be computed at Nu.10,000 (ten thousand) for every month of suspension.

13.3 Mitigating, Aggravating or Alternative Circumstances

In the determination of the penalties to be imposed, the following mitigating, aggravating and alternative circumstances attendant to the commission of the offense shall be considered:

- 13.3.1 First Offender;
- 13.3.2 Admission of guilt and voluntary restitution, where applicable;
- 13.3.3 Good faith;
- 13.3.4 Exemplary Performance;
- 13.3.5 Recidivism;
- 13.3.6 Prejudice to the BOW;
- 13.3.7 Gross negligence; and
- 13.3.8 Other analogous circumstances.

13.4 Manner of Imposition

When applicable, the imposition of the penalty may be made in accordance with the manner provided below:

- 13.4.1 The minimum penalty shall be imposed where only mitigating and no aggravating circumstances are present.
- 13.4.2 The minimum penalty shall be imposed where no mitigating but aggravating circumstances are present.
- 13.4.3 The maximum penalty shall be imposed where only aggravating and no mitigating circumstances are present.
- 13.4.4 Where aggravating and mitigating circumstances are present, paragraph (13.4.1) shall be applied. Where there are more mitigating circumstances present; paragraph (13.4.2) shall be applied when the circumstances equally offset each other; and paragraph (13.4.3) shall be applied where there are more aggravating circumstances.

13.5 Penalty for Cases Involving Five or More Complainants

A respondent found guilty of committing an offense, regardless of the number or nature of charges, against five (5) or more complainant in a single case shall be imposed the penalty of cancellation of license.

CHAPTER 14

APPEAL/PETITION FOR REVIEW

14.1 Jurisdiction

The CLA shall have exclusive jurisdiction to act on appeal(s) or petition(s) for review of recruitment and selection violation cases and other related cases decided by the Administration.

14.2 Period to Appeal

The party aggrieved by a decision of the Administration may appeal the same to the CLA within fifteen (15) calendar days from receipt of a copy of the decision. Failure of the aggrieved party to perfect his/her appeal within the stipulated period shall render the decision of the Administration final and binding.

14.3 Requirements for Appeal

The appealing party shall file a Notice of Appeal and an Appeal Memorandum with the Labour Relations Division (LRD) or the Regional Office of the Administration, as the case may be. The Appeal Memorandum shall clearly point out the errors of law and/or fact in the decision appealed from and shall be verified. Any appeal that does not comply with these requirements shall not be acted upon and the Administration shall issue forthwith an order for the execution of the decision for which the appeal is sought.

14.4 Transmittal of the Records of the Case on Appeal

Within twenty-four (24) hours from receipt of the appeal reasonably filed with the corresponding requirements, LRD shall transmit the entire records of the case to the Office of the CLA.

14.5 Period to Resolve the Appeal

Appeals from the decision of the Administrator shall be resolved by the Office of the Administration within sixty (60) calendar days from receipt of the transmittal of the entire records of the case.

CHAPTER 15

DISCIPLINARY ACTION CASES

15.1 Jurisdiction

The Administration shall exercise original and exclusive jurisdiction to hear and decide disciplinary action cases against BOWs, foreign employers and principals that are administrative in character.

15.2 Grounds for Disciplinary Action against Foreign Principals/Employers

- 15.2.1 Default on its contractual obligations to the BOWs and/or to its BOEA;
- 15.2.2 Gross violation of laws, rules and regulations on overseas employment;
- 15.2.3 Gross negligence leading to serious injury or illness or death of the BOW;
- 15.2.4 Grave misconduct;
- 15.2.5 Conviction of an offense involving moral turpitude; and
- 15.2.6 Any other case analogous to the foregoing.

15.3 Filing of Complaint

Any aggrieved BOW may file a complaint in writing and under oath for disciplinary action against a principal/ employer with the Administration.

The Administration may, on its own initiative, conduct proceedings against principal(s) or employer(s) based on verifiable or official reports.

15.4 Contents and Form of Complaint

Along with supporting documents, all complaints must contain the following:

- 15.4.1 Name and address of the complainant(s);
- 15.4.2 Name and address of the respondent(s);
- 15.4.3 Specific acts or omissions constituting the alleged offense;
- 15.4.4 Place where the offense was committed;
- 15.4.5 Date when the offense was committed; and
- 15.4.6 Relief sought.

15.5 Temporary disqualification

A foreign employer/ principal against whom a complaint for disciplinary action has been filed shall be temporarily disqualified from participating in the overseas employment program until the respondent submits to the jurisdiction of the Administration.

15.6 Effect of Filing an Answer

Upon filing of an answer, the respondent employer shall be qualified to participate in the overseas employment program without prejudice to the outcome of the investigation whereby the proper penalty shall be imposed.

15.7 Preventive Suspension

A principal/employer may be suspended from participating in the overseas employment program pending investigation of the disciplinary action case when the evidence of guilt is strong and there is reasonable ground to believe that the continued deployment to the principal/employer will result to further violation or exploitation of BOWs.

The Hearing Officer shall, within sixty (60) calendar days from the filing of the case, submit his findings and recommendations in the form of a draft order.

15.8 Handling of Cases

The procedure provided in this Regulation shall also apply to disciplinary action cases involving foreign employers/principals.

15.9 Disqualification of Foreign Employers/ Principals

Foreign employers/principals against whom the penalty of suspension or disqualification had been imposed through an order, decision or resolution shall be disqualified from participating in the overseas employment program unless cleared by the Administration or the penalty imposed is lifted.

CHAPTER 16

DISCIPLINARY ACTION AGAINST BHUTANESE OVERSEAS WORKERS

16.1 Grounds for Disciplinary Action

Commission by a BOW of any of the offenses enumerated below or of similar offenses shall be a ground for disciplinary action:

16.2 Pre-Employment Offenses

- 16.2.1. Using, providing, or submitting false information or documents for purposes of job application or employment;
- 16.2.2. Unjustified refusal to depart for the worksite after all employment and travel documents has been duly approved by the appropriate government agency (ies);
- 16.2.3. Offenses during Employment;
- 16.2.4. Commission of a felony or crime punishable by Bhutanese Laws or by the laws of the host country; and
- 16.2.5. Unjustified breach of employment contract.

16.3 Filing of Complaint

Any person may file a complaint in writing and under oath for disciplinary action against a BOW with the Administration.

The Administration may, on its own initiative, conduct proceedings against a BOW on the basis of verifiable or official reports.

16.4 Contents and Form of Complaint

Along with supporting documents, all complaints must contain the following:

- 16.4.1 Name and address of the complainant(s);
- 16.4.2 Name and address of the respondent(s);
- 16.4.3 Specific act(s) or omission(s) constituting the alleged offense;
- 16.4.4 Place where the offense was committed;
- 16.4.5 Date when the offense was committed; and
- 16.4.6 The relief(s) sought.

16.5 Exempting Circumstances

The following considerations shall be legitimate reasons for the refusal of a BOW to depart for the worksite, or to abandon or withdraw from employment:

- 16.5.1 Exposure to hazardous, demeaning working and living conditions;
- 16.5.2 Refusal of the employer or principal to grant, release or remit wages and other benefits due the BOW;
- 16.5.3 War, plague or other calamities at the worksite; and

16.5.4 Violation of labour laws of the Bhutan, the host country or international labour laws.

16.6 Handling of Cases

The procedures provided in this Regulation shall apply in disciplinary cases involving BOWs.

16.7 Temporary disqualification from overseas employment

A respondent BOW subject of appending complaint for disciplinary action or those against whom a warrant of arrest or hold departure order is issued by competent authority shall be disqualified from overseas employment unless temporarily cleared.

16.8 Effect of Filing of an Answer

Upon filing of an answer, the respondent BOW shall be qualified for overseas employment without prejudice to the outcome of the investigation whereby, the proper penalty may be imposed.

16.9 Disqualification from Overseas Employment Program

BOWs against whom neither suspension nor disqualification has been imposed through an order, decision, or resolution shall be disqualified from overseas employment program unless cleared by the Administration or the penalty imposed had been lifted.

16.10 Preventive Suspension

A BOWs may be preventively suspended when the evidence of guilt is strong and the charge involves a serious offense.

CHAPTER 17

CLASSIFICATION OF OFFENSES AND SCHEDULE OF PENALTIES

17.1 Classification of Offenses

Administrative offenses committed by the BOW are classified into serious, less serious, depending on their gravity. The Administration shall impose the appropriate administrative penalties for every violation.

17.1.1 The following is a serious offense with the corresponding penalty:

17.1.1.1 Unjust refusal to depart for the worksite after all employment and travel documents has been duly approved by the appropriate government agency (ies).

1st Offense: Six months to One (1) year suspension from participation in the overseas employment program.

2nd Offense: Permanent Disqualification.

17.1.2. The following are less serious offenses with their corresponding penalties:

17.1.2.1 Submission/furnishing or using false information or documents for purposes of job application or employment.

1st Offense: Two months to Six months suspension from participation in the overseas employment program.

2nd Offense: Six months to One (1) year suspension from participation in the overseas employment program.

3rd Offense: Permanent Disqualification.

17.1.2.2 Unjustified breach of employment contract

1st Offense: Two months to Six months suspension from participation in the overseas employment program.

CHAPTER 18

APPEAL/PETITION FOR REVIEW

18.1. Jurisdiction

The CLA shall have the exclusive jurisdiction to act on appeal(s) or petition(s) for review of disciplinary action on the cases decided by the Administration.

18.2. Filing of Appeal/Petition

Appeals or Petitions for Review shall be filed with the Administration within fifteen (15) calendar days from receipt of the decision by the appealing or petitioning party.

18.3. Prescription

All recruitment, selection and employment violation cases enumerated in these Rules shall be barred if not commenced or filed with the Administration within one (1) year after such cause of action accrued.

Likewise, disciplinary action shall be barred if not commenced or filed with the Administration within one (1) year after such cause of action occurred.

CHAPTER 19

WELFARE SERVICES

19.1 Responsibility to BOWs

The Administration shall ensure that BOWs deployed overseas are adequately protected and that their interest, wellbeing and welfare are promoted. BOEAs shall be responsible for the faithful compliance by their foreign principals of all obligations under the employment contract.

19.2 Request for Assistance

The Administration shall take cognizance of any request for assistance from the BOW and/or his/her family on matters relating to overseas employment.

19.3 Call for Action and Submission of Reports

The Administration shall require the BOEA to act on complaints or problems brought to its attention or to submit reports on the status or condition of the BOW.

19.4 Administrative Sanctions

Deliberate failure by BOEAs and/or employers to act on requests for assistance and/or complaints of BOWs and/or families shall warrant imposition by the Administration of such sanctions as it may deem appropriate.

19.5 Welfare Programs and Activities

The Administration, in coordination with other institutions, shall initiate and undertake such projects and activities that will enhance the welfare and promote the interest of BOW and their families including those that will facilitate the psychosocial and economic reintegration of BOW who have decided to return home for good.

19.6 Conciliation of Complaints

The Administration may conciliate any complaint involving a BOW, BOEA, or foreign principal/employer relating to overseas employment.

19.7 Conciliation Proceedings

Within 5 days upon receipt of the complaint, the Administration shall notify the respondent and schedule a conference between the parties to discuss the possibility of arriving at an amicable settlement. Where an amicable settlement is reached, the Administration shall approve the same and the settlement shall be final and binding upon the parties. Where efforts for amicable settlement fail, the conciliation proceedings shall be terminated and the complaint shall be referred to the appropriate authority immediately.

Likewise, if after evaluation of complaints and supporting documents, the employer or principal is found to be remiss in the performance of its contractual obligations to its BOWs, the Administration shall disqualify the said employer or principal from participating in the overseas employment program.

19.8 Administrative Sanction

Unjustified failure by BOEAs to appear or make proper representations during conciliation proceedings or to abide by the terms of the approved settlement shall warrant the suspension of documentary processing until compliance.

19.9 Repatriation of BOWs

The repatriation of the BOW and the transport of his/her personal belongings shall be the primary responsibility of the BOEA, which recruited or deployed the BOW overseas. All costs attendant to repatriation shall be borne or be charged to the BOEA concerned and/or its principal. Likewise, the repatriation of remains and transport of the personal belongings of the deceased BOW and all costs attendant thereto shall be borne by the principal and/or the BOEA.

However, in cases where termination of employment is due solely to the fault of BOW, the principal/employer or BOEA shall not in any manner be responsible for the repatriation of the former and/or his/her belongings.

19.10 Repatriation Costs When Employment is Terminated

The principal or BOEA shall advance the cost of air fare without a prior determination of the cause of the termination of the BOWs employment. However, the principal/BOEA may recover the cost of repatriation from the BOW upon his return to Bhutan if termination of employment is due solely to BOW's fault.

19.11 Repatriation Procedure

When the need for repatriation arises and the principal fails to provide for the costs, the Bhutanese Embassy/Consulate/ Overseas Labour Office at worksite shall simultaneously notify the Administration of such need. The Administration shall require the BOEA to provide the air fare or a pre-paid ticket and advice to Bhutanese Embassy/Consulate/Overseas Labour Office and to report its compliance to the Administration which shall advise the Administration accordingly.

19.12 Administrative Sanction for Non-Compliance

If the BOEA fails to provide the ticket or pre-paid ticket and advice within 48 hours from receipt of notice, the Administration shall suspend the documentary processing of the BOEA or impose such sanctions, as it may deem necessary. The Administration may request Overseas Workers Welfare Administration (OWWA) to advance the costs of repatriation with recourse to the BOEA and/or employer. The administrative sanction shall be lifted after the BOEA or employer shall have reimbursed OWWA of the costs of repatriation.

19.13 Referral of Qualified Applicants

The Administration may refer qualified applicants from the registry to BOEA for possible placement.

19.14 BOEA Manpower Pool

BOEAs may maintain its own manpower pool provided no fee shall be charged to the applicant nor services be required of him in consideration of membership in the manpower pool.

19.15 Research Studies

The Administration, in coordination with other entities, shall conduct periodic researches and studies on labour supply especially as it relates to the monitoring of the outflow of critical skills.

19.16 Manpower Development Program for Bhutanese Overseas Workers

The Administration shall extend technical support and establish linkages with government agencies and other concerned sectors in the development and provision of assistance programs in the training of overseas workers for overseas jobs as well as in enabling them to transfer their skills and learning, upon their return.

19.17 Training Programs and Standards

The Administration shall coordinate with private entities, government agencies, and employers concerned in the formulation of training programs and standards.

CHAPTER 20

DEFINITION OF TERMS

For the purpose of these Rules, the following terms are defined as follows:

1. **Accreditation** – shall refer to the grant of authority to a foreign principal to recruit and hire Bhutanese workers through a licensed agency for overseas employment.
2. **Administration** – shall refer to the Ministry of Labour & Human Resources
3. **Agency** – shall refer to a private employment agency as defined herein.
4. **Bhutanese Overseas Worker (BOW)** – shall refer to any person, who has secured employment overseas through BOEA.
5. **Chief Labour Administrator** – shall refer to the Secretary of the Ministry of Labour & Human Resources.
6. **Corporate Recruitment** – shall refer to the act of providing the required manpower for all facets of an overseas project.
7. **Derogatory record** – refers to the existence of negative information such as, but not limited to, illegal recruitment, falsification, swindling and/or conviction for crimes involving moral turpitude.
8. **Documentation cost** – shall refer to actual cost incurred in the documentation of an applicant worker in relation to his/her application for overseas employment, such as, but not limited to Passport, Security Clearance, authentication, birth certificate, Medicare, and medical examination fees.
9. **Employment Contract** – shall refer to an individual written agreement between the foreign principal/employer and the worker which is based on the master employment contract.
10. **Joint and Soldiery Liability** – refers to the nature of liability of the principal/employer and the recruitment/placement agency, for any and all claims arising out of the implementation of the employment contract involving Bhutanese workers for overseas deployment. It shall likewise refer to the nature of liability of officers, directors, partners with the company over claims arising from employer-employee relationship.
11. **Master Employment Contract** – shall refer to the model employment agreement submitted by the foreign principal for verification and approval which contains the terms and conditions of employment of each worker hired by such principal.
12. **Placement Fee** – shall refer to the amount charged by a private employment agency from a worker for its recruitment and placement services, as prescribed by the Administration.
13. **Principal** – shall refer to a foreign person, partnership, or corporation hiring Bhutanese workers through a licensed BOEA.

14. **Recruitment Agreement** – shall refer to an agreement by and between the principal and the private employment agency or the Administration defining their rights and obligations.
15. **Recruitment and Placement** – shall refer to any act of canvassing, enlisting, contracting transporting, and utilizing, hiring or procuring workers and includes referrals, contract services, promising or advertising for employment abroad.
16. **Service Fee** – shall refer to the amount charged by a licensee from its foreign principal as payment for actual services rendered in relation to the recruitment and placement of workers.

